Supreme Court, U.S.
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No. 96-1709

In The

Supreme Court of the United States

October Term, 1996

VERONICE A. HOLT,

Petitioner,

v.

ARVIE J. LEE,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal, First District Of The State Of Florida

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

A. Historical Background 1

B. The Michigan Proceedings 3

C. Florida Proceedings 3

REASONS FOR DENYING THE PETITION 6

A. The Court has no jurisdiction over Petitioner's arguments 6

B. In any event, the Florida courts did not compromise Petitioner's constitutional rights under the full faith and credit clause or the privileges and immunities clause 7

CONCLUSION 9

TABLE OF AUTHORITIES

Page

I. Cases Cited:

Beck v. Washington, 369 U.S. 541 (1962) 6

Chapman v. Campbell, 119 So.2d 61 (Fla. 2d DCA 1960) 7

In re Cummins Estate, 259 N.W. 894, 271 Mich. 215 (Mich. 1935) 8

In re Estate of Ziy, 223 So.2d 42 (Fla. 1969) 7

In re Johnson's Estate, 281 N.W. 597, 286 Mich. 213 (Mich. 1918) 8

In re Vallender's Estate, 17 N.W. 2d 213, 310 Mich. 359 (Mich. 1945) 8

In re Weber's Estate, 167 N.W. 937, 201 Mich. 477 (Mich. 1918) 8

Rice v. Rice, 15 N.W. 545, 50 Mich. 448 (Mich. 1883) 8

Schneider v. Vosburgh, 106 N.W. 1129, 143 Mich. 476 (Mich. 1906) 8

Yee v. City of Escondido, 503 U.S. 519 (1992) 6

II. Statutes Cited:

20 U.S.C. § 1257 6

38 U.S.C. § 5502(d) 4, 7

Florida Statutes § 394.4672 (1991) 4, 5

Florida Statutes § 744.103 (1991) 4, 5

III. United States Constitution Cited:

Article IV, Section 1 ..... 5, 6

Article IV, Section 2 ..... 5, 6

STATEMENT OF THE CASE

Respondent respectfully suggests that Petitioner's request for review by this Court is totally without merit. First, there was no judgment or order by a court of the State of Florida which failed to recognize or give proper weight to a judgment by a Michigan court. Second, the record of the proceedings in the courts of the State of Florida is totally devoid of any evidence that Petitioner was denied any privilege or immunity that citizens of Florida are granted.

A. Historical Background.

Lloyd Hold was born on January 8, 1924. He enlisted in the Army in January, 1943. He was discharged in 1944 because of psychoneurosis. Shortly after discharge, he was awarded a 10% disability pension by the Veterans Administration. Mr. Holt married Laverne Green on September 3, 1946. On August 12, 1947, Mr. and Mrs. Holt had their first child. On November 18, 1948, Mr. and Mrs. Holt gave birth to twin daughters, Petitioner Veronice Holt and her sister, Valerie Holt. During January or February, 1949, Mr. Holt suffered what is colloquially referred to as a nervous breakdown and was involuntarily committed. He was transferred to a Veterans Administration (VA) facility and remained hospitalized until 1967 because of schizophrenia. Commencing in May of 1949, Mr. Holt's service connected disability rating was increased to 100% and he was rated incompetent by the VA. From May of 1949 through May of 1959, Mr. Holt's VA benefits were paid directly to Mrs. Holt. Mrs. Holt divorced Mr. Holt in 1958. Upon divorce, a guardianship

was established under the Michigan Veterans Guardianship Act for receipt and administration of Mr. Holt's VA benefits and Social Security benefits. None of the Holt children had any contact with their father from 1948 to the time of his death on May 16, 1991, other than Petitioner Veronice Holt who exchanged some correspondence with him in 1967. In June of 1967, Mr. Holt was released from the VA hospital in Battle Creek, Michigan, and lived in a private home, pursuant to a VA sponsored foster care program. In July of 1968, Mr. Holt was released from further care and treatment by the VA facility in Battle Creek, Michigan. He moved to Jacksonville, Florida, where he resided with his sister. A bank in Detroit served as guardian of Mr. Holt's property, pursuant to the 1959 Veterans Guardianship Act guardianship, but Mr. Holt lived a somewhat normal life in Jacksonville, doing much of his own shopping, maintaining his own separate bank account, and getting about town through public and private transportation. Because of his VA pension and Social Security benefits, he had no financial need to work. The VA disability rating continued at 100% to the time of Mr. Holt's death and he received VA disability and Social Security benefits to the date of his death. In January of 1989, at Jacksonville, Florida, Mr. Holt executed a will whereby he left his estate to his nephew, Arvie Lee, who had cared for Mr. Holt and Mr. Holt's sister for a number of years prior to the execution of the will. At the time of Mr. Holt's death, the bank in Michigan serving as Mr. Holt's guardian held approximately $300,000 in savings and investments from his VA benefits and Social Security benefits.

B. The Michigan Proceedings.

Administration of Mr. Holt's estate was commenced in Michigan. An issue arose as to Mr. Holt's domicile at the time of death. The Michigan probate court determined that when Mr. Holt moved to Jacksonville, Florida, in 1968, he had changed his domicile from Michigan to Florida. The Michigan probate court determined that Mr. Holt possessed the mental capacity in 1968 to change his domicile. The court found in the alternative that, even if he did not possess the requisite mental capacity, his guardian certainly could agree and acquiesce to such move, and, under the facts of this case, the guardian's approval and acquiescence served as an alternative basis for the change of Mr. Holt's domicile to Florida. Petitioner Veronice Holt appealed this probate court ruling to the Michigan appellate court. The appellate court upheld the probate court. After determining that Mr. Holt was a domiciliary of Florida at the time of death, the Michigan court referred all matters relating to his estate to the Florida courts where Florida law concerning the issues of testamentary capacity and undue influence applied.

C. Florida Proceedings.

Arvie J. Lee, the nephew of Mr. Holt and the beneficiary under Mr. Holt's last will and testament, commenced administration of Mr. Holt's estate in August of 1991. On August 14, 1991, Mr. Holt's last will and testament, dated January 17, 1989, was admitted to probate. Thereafter, Petitioner Veronice Holt filed a petition to revoke probate of the will based upon lack of testamentary capacity, undue influence and fraud. A trial was held and the court

found that Mr. Lee had proved, by a preponderance of the evidence, that Mr. Holt possessed testamentary capacity. The court further found that there was no undue influence or fraud in the procurement of the will. The court further found that the assets held by the Michigan guardian were not funds held pursuant to 38 U.S.C. § 5502(d), another issue raised by Petitioner Veronice Holt in the proceedings below. At the trial level, Petitioner Veronice Holt never made the constitutional arguments now raised before this Court, nor did she ever cite to the trial court or premise any argument upon Florida Statutes § 394.4672 and § 744.103. However, the trial court had before it the entire Michigan guardianship file and all VA records relating to Lloyd Holt.

Petitioner Veronice Holt took an appeal to the First District Court of Appeal. In neither her opening brief nor her reply brief did she ever argue or cite Florida Statutes § 394.4672 or § 744.103, or the constitutional provisions upon which she bases her petition herein. Petitioner Holt's appeal of the trial court's determination on the issues of testamentary capacity, undue influence and fraud was based upon the sufficiency of evidence. The Michigan adjudication of incapacity in the Michigan Veterans Guardianship Act proceeding was before the appellate court as an item of relevant evidence on the issue of incapacity. Never did Petitioner Veronice Holt, either before the trial court or before the First District Court of Appeal, argue that the adjudication in the Michigan Veterans Guardianship Act case constituted a determination which somehow conclusively established Mr. Holt's incapacity for testamentary purposes. In fact, in both her opening brief and reply brief in the First District Court of

Appeal, Petitioner Veronice Holt never cited any Michigan cases dealing with this issue.

After the First District Court of Appeal affirmed the trial court, Petitioner Veronice Holt filed a petition for discretionary review with the Florida Supreme Court, which petition was dismissed. On December 3, 1996, Petitioner Veronice Holt filed a petition for writ of mandamus with the Supreme Court of Florida and, for the first time, asserted that (1) the final order finding Lloyd Holt competent to execute a will was a violation of Florida Statutes § 394.4672 and § 744.103, and (2) the failure to give effect to the prior adjudication of insanity was a violation of the full faith and credit clause, Article IV, Section 1, of the United States Constitution. Contrary to the allegations in the petition pending before this Court, Petitioner Veronice Holt did not assert in her petition for writ of mandamus with the Supreme Court of Florida that the trial court's order violated the privileges and immunities clause, Article IV, Section 2, of the United States Constitution. The Florida Supreme Court denied the petition for writ of mandamus.

Petitioner has filed the instant petition seeking review of the judgment of the First District Court of Appeal. She has filed an almost identical petition before this Court in Case Number 1708 seeking review of the Florida Supreme Court's denial of her writ for mandamus or prohibition.

REASONS FOR DENYING THE PETITION

A. The Court has no jurisdiction over Petitioner's arguments.

This Court wisely refuses to review judgments rendered by the court of a state unless the federal question placed before this Court has been both raised and decided in the state court below. *Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992) (in reviewing judgments of state courts under 20 U.S.C. § 1257, the court will refuse to consider claims that were not raised or addressed below). *See also Beck v. Washington*, 369 U.S. 541, 549-53 (1962) (because petitioner failed to argue equal protection in the state court, question was not before this Court).

In this action, Petitioner seeks a review of an order entered by the Florida First District Court of Appeal. The bases for review are the First District Court of Appeal's failure to afford her guarantees found under the full faith and credit clause, Article IV, Section 1, and the privileges and immunities clause, Article IV, Section 2. Petitioner never presented these constitutional bases for relief to the First District Court of Appeal. Rather, for purposes of this Court's review of the First District Court of Appeal's order, she has for the first time raised them in her petition for writ of certiorari. The federal questions, having not been raised in the relevant state court proceedings, are not now properly before this Court for review.

B. In any event, the Florida courts did not compromise Petitioner's constitutional rights under the full faith and credit clause or the privileges and immunities clause.

Neither the Michigan probate court nor the Michigan appellate court made any determination concerning the issues of Mr. Holt's testamentary capacity, undue influence, fraud or the applicability of 38 U.S.C. § 5502(d). Rather, the Michigan courts deferred these matters to the Florida courts based upon the Michigan courts' finding that Mr. Holt had changed his domicile in 1968 and died a domicilairy of Florida. As to the allegation that the Florida courts failed to give proper deference to the Michigan adjudication of incapacity when the Veterans Guardianship Act guardianship was established in 1959, such argument is patently frivolous. The evidence of the 1959 adjudication, as well as the 1948 involuntary commitment, was before both the Florida trial court and the Florida appellate court. The adjudication in 1959 and the 1948 involuntary commitment were evidentiary facts to be considered by the Florida courts in determining whether Mr. Holt possessed testamentary capacity.

Under Florida law, the law applicable to a determination of testamentary capacity in the case of a decedent domiciled in Florida who executed his will in Florida, a prior adjudication of incapacity does not render one incapable of making a will. Rather, a prior determination of incapacity merely shifts the burden of going forward with the evidence. *In re Estate of Ziy*, 223 So.2d 42 (Fla. 1969); *Chapman v. Campbell*, 119 So.2d 61 (Fla. 2d DCA 1960). That is, the burden of persuasion falls upon the proponent of the will, and, in the instant case, the trial court

found that the proponent of the will had established, by a preponderance of the evidence, the existence of testamentary capacity. Thus, the trial court correctly applied Florida law in finding testamentary capacity. Even if one were to find that Michigan law applied to the instant case, the same result would obtain. Under Michigan law, testamentary capacity is defined as the ability to make the effort of mind and memory necessary to remember what property a testator owns, to consider who may have claims to it, and what disposition is to be made under a testamentary instrument. *Schneider v. Vosburgh*, 106 N.W. 1129, 143 Mich. 476 (Mich. 1906). Less mental capacity is required to enable a man to make a valid will than to enter into a valid contract. *In re Weber's Estate*, 167 N.W. 937, 201 Mich. 477 (Mich. 1918). The fact that a testator has been adjudicated mentally incompetent and the care, control and custody of his property and person awarded to a guardian does not render him incompetent to make a will under Michigan law. *Rice v. Rice*, 15 N.W. 545, 50 Mich. 448 (Mich. 1883); *In re Cummins Estate*, 259 N.W. 894, 271 Mich. 215 (Mich. 1935); *In re Johnson's Estate*, 281 N.W. 597, 286 Mich. 213 (Mich. 1918); *In re Vallender's Estate*, 17 N.W. 2d 213, 310 Mich. 359 (Mich. 1945). Thus, the law of Michigan appears in all respects to be identical to the law of Florida on the test for testamentary capacity and the issue of whether a person who has been adjudicated incapacitated can possess the mental capacity necessary to make a will. Therefore, even if Petitioner's constitutional arguments had any merit, which they do not, the same result would obtain because the trial court's findings would have been the same had Michigan law been applied.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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